

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on February 13, 2001 at 3:30 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Alan Olson (R)

Members Absent: None.

Staff Present: Stacey Lietgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 234, 2/9/2001; SB 56,
2/9/2001; SB 269, 2/9/2001; SB
57, 2/9/2001
Executive Action: HJ 10; HJ 18; HB 338; HB 374

HEARING ON HB 234

Sponsor: SENATOR JOHN TESTER, SD 45

Proponents: Allen Thiessen, Montana Electric Cooperatives'
Association
Ron Ossburg, Montana Independent Telecommunications
Systems

Opponents: None

Opening Statement by Sponsor:

SENATOR JOHN TESTER, SD 45, said that the sole purpose of this bill is to establish standards of conduct and provide personal liability protections to trustees and officers of electric and telephone cooperatives. This is accomplished by amending the Electric and Telephone Cooperative Enabling Law utilizing language found in state statutes for other business corporations. The current Enabling Law, which was enacted 61 years ago, contains no standards of conduct and no personal liability protections for coop trustees and officers. The time has come for this deficiency in the existing law to be rectified. This industry is undergoing major changes. They are gradually moving towards more competition. This move towards more and more market-type decisions has placed a much greater burden of responsibility on our coop trustees and officers. This increased burden has required that coop boards have a much clearer understanding of what is expected of them in performing their duties. For that reason, the standards of conduct provisions are in this bill. The personal liability provisions found in this bill will provide for better protection, but allow for appropriate exceptions.

Proponents' Testimony:

Allen Thiessen, Montana Electric Cooperatives' Association,
submitted written testimony. **EXHIBIT (feh36a01)**

Ron Ossburg, Montana Independent Telecommunications Systems,
shared a personal experience. He served as a director for 25 years on various cooperative boards. When he was serving on the board in Fairfield, they had trouble with winds knocking down the electric lines. There was some pasture lands that were burnt and some hay that was destroyed. Following this, the landowner asked to be compensated for his losses. The insurance company for the cooperative determined that it was an act of God, so the insurance company wasn't liable. The landowner then sued the

cooperative, as well as Mr. Ossburg as an individual. That is an example of the kind of situation that the directors of the boards can be placed in. For that reason he supports the bill.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 4.7}

REPRESENTATIVE DEE BROWN asked Mr. Thiessen if cooperatives have liability insurance as a regular part of doing business.

Mr. Thiessen said that they all have the liability insurance to protect the assets of the cooperative. **REP. BROWN** said that the word corporation and cooperative have been used interchangeably. What is the difference? **Mr. Thiessen** said that cooperatives are incorporated under the electric cooperative provision provided by statute. They are legal corporations, but they are a nonprofit unit as well. **REP. BROWN** clarified that we are going to create a law for a nonprofit corporation. **Mr. Thiessen** said that what this does is take the sections directly from the for-profit corporate statutes, and also add them to the cooperative portions of the statutes. It's not creating a law, it is just adding to it. **REP. BROWN** asked for other nonprofit corporations who have similar trustee conflict definitions under Montana statute.

Mr. Thiessen said that some of those would be hospitals, charities, telephone coops, et cetera. The thing that makes the electric coops unique in that they are enabled under a separate portion of Montana law.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 8.3}

SENATOR TESTER said that cooperatives were set up to provide a service 60 years ago. The fact is that there are private citizens who run for positions on those boards. Because of the way things have happened over the last 50 years, they are going to play a huge role in the problems that the state faces right now from an energy standpoint, as well as from a communications standpoint. It is important that their private assets are protected. They do this for the good of the communities and, unless they have the same protections that corporations have in the state right now, we are really putting them at risk. He is asking to give the directors on the cooperatives the same protections that directors have on business corporations.

Sponsor: SENATOR WALTER McNUTT, SD 50

Proponents: Allen Thiessen, Electric Cooperatives' Association
Gary Wiens, Montana Electric Cooperatives'
Association
Mark Linberg, Sun River Electric Cooperative
Terry Holzer, Yellowstone Valley Electric
Cooperative

Opponents: Debbie Smith, Natural Resources Defense Council,
Renewable Northwest Project

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 10.1}

SENATOR WALTER McNUTT, SD 50, said that SB 56 was by the request of the Transition Advisory Committee. The purpose of the bill is to set the record straight for an agreement that was reached in 1997. It deals with the fact that electric coops and Columbia Falls Aluminum Company (CFAC) are paying for conservation costs in their electric rates, the agreement was that they would be able to amortize those costs and use them as a reduction against their USBP spending levels. These groups are purchasing power only from BPA. This doesn't include any customers with MPC. This is an issue that arose out of the fact that when the Department of Revenue wrote the rules, they had it in rule making that these costs couldn't apply to projects prior to 1999. These costs have been ongoing for years before that. If the department's rule is to prevail, the net effect would be that these folks will have to have about a 2% price increase to their customers.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 12.9}

Allen Thiessen, Electric Cooperatives' Association, submitted written testimony. EXHIBIT(feh36a02) EXHIBIT(feh36a03)

Gary Wiens, Montana Electric Cooperatives' Association, submitted written testimony. EXHIBIT(feh36a04)

Mark Linberg, Sun River Electric Cooperative, submitted written testimony. EXHIBIT(feh36a05)

Terry Holzer, Yellowstone Valley Electric Cooperative, submitted written testimony. **EXHIBIT (feh36a06)**

Stan Kaleczyc, Columbia Falls Aluminum Company, said that they are in the same position as the cooperatives who have testified. At the time that SB 390 and the USBP program were being considered, they had the same understanding and expectations as the cooperatives, and that was that the Department of Revenue's regulations would include a specific provision to allow both amortized and non-amortized costs to be claimed as a credit. He is here to clarify the regulation which was necessary because the department took the position during the rule-making process that, because the words amortized and non-amortized were not specifically contained in the statute, they were unwilling to put them in the regulation. CFAC has a commitment to conservation. It has to conserve electricity to make a profit. It also has a historic commitment to low income. In 2002, the CFAC will be coming back on line and will be buying power from BPA, being able to have those credits available is important to CFAC.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 2.6}

Debbie Smith, Natural Resources Defense Council, Renewable Northwest Project, said that the Department of Revenue (DOR) didn't believe that the legislation was sufficiently clear that they would claim amortization costs for old programs in the region, so those costs were disallowed in the rules. She doesn't believe that this bill represents good policy. What Montana needs to be doing is investing in cost effective energy conservation that is going to be a lot less expensive than the new supply that is going to be purchased very soon. This bill is not limited to just the rural electric coops or to CFAC, it applies to any utility or any large industrial that self directs USB funds. The DOR rules don't disallow amortizing new programs that began once the USBC began. This money should be dedicated to energy efficiency measures, renewable power measures, and new low income energy assistance measures. This amount of money that the cooperatives want to claim for old programs is very significant. It is about 2/3 of what the coops are spending on USBC. CAFC has written off their entire obligation as far as their debt service to Bonneville. This is bad policy and not the way that Montana needs to go.

Questions from Committee Members and Responses:

REPRESENTATIVE TOM DELL asked Mr. Thiessen to clarify if section 3 applies retroactively and how far back would it be applied.

Mr. Thiessen said that the very earliest of these starts in 1981, most of them are in the early 1990's. He read some project examples: weatherization pilot growth program, \$100,000; residential weatherization, \$2.6 million; low income weatherization program, \$250,000. All these programs are paid for by these rate payers, just as the new programs are. You don't take that kind of a hit and pay for it in one year. We are still paying for those programs, in addition to some new ones.

REPRESENTATIVE TRUDI SCHMIDT asked for Mr. Thiessen to comment on earlier testimony that said that this isn't the way Montana should go. **Mr. Thiessen** said that the witness's point was that new programs should be invested in. They don't argue that there should be new programs, but that isn't the purpose of this bill. The cooperatives are spending a considerable amount of money on new programs. This is allowing them to receive credit for historic projects that they are already obligated to pay for.

REPRESENTATIVE GARY FORRESTER asked about SB 390 and why it was so misunderstood. **Mr. Williams** said that the language in SB 56 that was not directly specific, but they believed allowed these amortized credits, is in 69-8-402. It states that utilities must receive credit toward annual funding requirements for utilities' internal programs or activities that qualify as USB programs, including those portions of expenditures for the purchase of power. Apparently the DOR didn't check adequately into what the history of the legislation was and they didn't see the words amortized or non-amortized. **REP. FORRESTER** asked for the page and line number where the misunderstanding occurred.

Mr. Williams said that those are specific amendments that were offered by NRDC. He referred to a handout. **EXHIBIT (feh36a07)**

REP. FORRESTER wants to see where the deal was made, if it in fact was made. **Mr. Williams** said that 402, 2b, was the specific amendment that was added to SB 390 after the first round of hearings. This was a specific amendment that addressed that the cooperatives could get credit for these projects. That was one component in which the legislature was re-enforcing the cooperatives ability to give credit for these projects. **Mr. Maly** commented that it was a contested process that lead to this occasion. The statute doesn't include the words amortized or non-amortized, that is the essence of the argument about what was intended in the language of the legislation that is on the books now. **REP. FORRESTER** commented that he would like to ask the DOR why it had happened. (They were not in attendance.) **SENATOR McNUTT** said that the Director of DOR had expressed concern about the retroactive part of the bill. When the sponsor explained to

the director that when the rule process was moving through the original draft of the rules included this provision, but the final draft didn't. The director said that this would be a milestone to go back and have something retroactive. The director came back two days later and said that they had made a mistake and written the rules wrong. DOR said that the bill is fine. The intent was there and DOR will support the bill.

REPRESENTATIVE BOB STORY asked if this subject was discussed in the rule-making process. **Mr. Wiens** said that it had been. However, the DOR wanted to have specific language in that law that said amortized and non-amortized. Because it wasn't there, they decided that they wouldn't allow it. **REP. STORY** asked if the DOR actually had a dog in this fight. **Mr. Wiens** said that they did not. He feels that they didn't really understand the program.

REP. STORY said that Ms. Smith had indicated that MPC just moves these rates through the cost system and onto the consumers.

Ms. Smith said that was correct. **REP. STORY** clarified that she thought that is what the cooperatives should do too; they should just raise their rates to generate this money. **Ms. Smith** commented that if they need to raise the rates, that would be her contention. MPC only funds new programs and their residential rates for USBC is about 13 mills. A rate increase for the coops would be less than the 13 mills for MPC. It would be an extremely modest charge.

REPRESENTATIVE DEE BROWN clarified that CFAC is going to come on-line in 2001. **Mr. Kaleczyc** said that his understanding is it will be in 2002. **REP. BROWN** said that CFAC had given \$85,000 in 1999, and also in 2000. **Mr. Kaleczyc** said that is correct.

REP. BROWN asked for examples of some programs that wouldn't have happened without this money from CFAC. **Mr. Kaleczyc** said that in both of those years the money went to low income energy assistance. It was to help people who were in need to meet their power bills.

Closing by Sponsor:

SENATOR McNUTT said that there is some concern about money being spent for conservation and renewables. He reminded the committee that the cooperatives are customer owned and, if it is to their benefit, they are going to continue to do this. He also commented that it is an insignificant amount of money that we are talking about, but it adds up quite rapidly.

HEARING ON SB 269

Sponsor: SENATOR WALTER McNUTT, SD 50

Proponents: John Alke, Montana-Dakota Utilities Company
Gloria Paladichuk, Richland Economic Development

Opponents: None

Opening Statement by Sponsor:

SENATOR WALTER McNUTT, SD 50, said that the purpose of this bill is to eliminate from statute the dates certain for MDU to deregulate in Montana alone. The current statute says that they must develop a plan by 2002 and by 2006 they must deregulate. MDU is a multi-state energy company. MDU provides power in the eastern part of the state. Their entire system is located in an entirely different power grid. The bulk of their generation is located in other states. Only 25% of the system is located in Montana. To force MDU to isolate only the Montana portion of its system and separately operate it as an open-access system will cause harm to the customers in eastern Montana. They could be saddled with all of the costs in developing an open-market system. That is not a good, practical, or realistic requirement for Montana to impose this on MDU and its customers. They serve about 24,000 customers in eastern Montana. This bill will not require MDU to move to open access in Montana alone, but rather will allow them to do it when MDU, as a total company, moves to open access.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 9.6}

John Alke, Montana-Dakota Utilities Company (MDU), submitted written testimony. **EXHIBIT(feh36a08)**

Gloria Paladichuk, Richland Economic Development, doesn't think it is in their best interest to require MDU to take a small portion of their system and run it as an open-access system. She submitted two letters of support. **EXHIBIT(feh36a09)**
EXHIBIT(feh36a10)

Questions from Committee Members and Responses:

REPRESENTATIVE BOB STORY said that when we went into this experiment there was MDU and MPC. In light of the proposed sale of MPC to Northwestern, it will also become a multi-state company

similar to MDU, will this have any affect on them. **SENATOR McNUTT** said that it would not because there is nothing in the Columbia Basin requiring open access. They are working under an open-access chart in the state which has been extended. He has also talked to Northwestern and they are not concerned about this.

Closing by Sponsor:

SENATOR McNUTT said that this just makes good sense. The cost to get to open access would be passed onto the consumers. It is not going to be a small thing.

REP. KASTEN will carry this bill.

HEARING ON SB 57

Sponsor: **SENATOR ROYAL JOHNSON, SD 5**

Proponents: **Deb Young, MPC**
Debbie Smith, Natural Resources Defense Council,
Renewable Northwest Project
Kathy Hadley, National Center for Appropriate
Technology
Michelle Rheinhardt, Montana Environmental
Information Center
Greg Groepper, Energy Share
Betty Whiting, Montana Association of Churches
James Curtis

Opponents: **None**

Opening Statement by Sponsor:

SENATOR ROYAL JOHNSON, SD 5, said that this bill extends the period of the UBS up to 2005. He offered an amendment.
EXHIBIT (feh36a11) The Universal Benefits are a wonderful opportunity to do weatherization and for low income people to have some supplement on their utility bills. MPC is who present most of the money, but it is the consumers who actually pay for it. The number was set in the law a long time ago and there was some conversation that it should be raised to 3%. He feels that with the increase in the power, we ought to be able to generate a lot of money with the way it currently is.

Proponents' Testimony:

Deb Young, MPC, supports the extension of the UBS charge and the public purposes that it was designed to support. MPC has a long history of operating weatherization, low income assistance programs, energy conservation programs, et cetera. With the USB program they have been able to sustain and expand their energy conservation, and low income programs at very little cost increase to their customers, approximately \$1 per month for residential customers. The USB program helps greatly in program implementation; it gives greater stability for these programs. Uncertainty creates problems with implementation.

Debbie Smith, Natural Resources Defense Council, Renewable Northwest Project, said that this bill adds some necessary stability to these programs as we move forward into this period of uncertainty. This is a very modest charge, but it does a lot. She also supports the amendment to allow MPC to spend more money on the USBC programs. That would have to come at the approval of the PSC and with the permission of MPC. It codifies the existing practice that cooperatives already believe they have.

Kathy Hadley, National Center for Appropriate Technology (NCAT), submitted written testimony and supplemental information.
EXHIBIT(feh36a12) EXHIBIT(feh36a13)

Michelle Rheinhardt, Montana Environmental Information Center, supports this bill for the reasons already heard. The USB supports very good programs that make common sense, save money in the long term, invest in renewable energy, all of which is good for Montana.

Greg Groepper, Energy Share, said that an extension in times when prices are rising is critical for the low income people. He also supports the amendment.

Betty Whiting, Montana Association of Churches, said that this will allow consistency into the future. They are in support of things that will help the low income families.

James Curtis said that he is very interested in the possibilities for renewables because of the sustain-ability in the long run and their low emissions for Montana's air.

Questions from Committee Members and Responses:

REPRESENTATIVE DEE BROWN asked if Ms. Hadley could give more information on the homes that were chosen for the energy program.

Ms. Hadley said that the systems themselves cost about \$10,000 for the hardware. There are some additional costs in terms of administration costs. The homeowners paid for \$3,000 and the grant paid for \$7,000.

REPRESENTATIVE BOB STORY said that if it costs \$10,000 to put a kilowatt on, what does that break down to? **Ms. Hadley** said that it was 24 cents. These were meant as pilot demonstration projects and the idea was to provide a place in everybody's community that they could go and see what a solar system looks like and they could use it as a way to start educating people.

REP. STORY asked who determines how much money is put into this program. **SENATOR JOHNSON** referred to line 17. **REP. STORY** asked, if we put the amendment on, who will determine how much goes in? **SENATOR JOHNSON** said that it would be determined the same way. The only reason for putting that amendment on is that it doesn't limit it to 2.4%. **REP. STORY** clarified that with the amendment it could be anything above the 2.4%. Who is going to regulate it? **SENATOR JOHNSON** said that the utility would regulate it depending on how much money they feel like they can put into a program like that. **REP. STORY** asked if the statute says that all costs are recoverable. **SENATOR JOHNSON** said that was right. **REP. STORY** said that the PSC has the authority to deny any charges that are going into the rate. **SENATOR JOHNSON** referred to **Ms. Young**. She said that the law is right now, what MPC collects in USB charges is through a rate set by the Montana PSC. As of January 1, 1999, PSC approved a rate structure that would not change with the amendment. **REP. STORY** referred to lines 23 and 24 of the bill. Doesn't that require the PSC to pass through any costs? **Ms. Young** said that language in the law that says that USBC expenses will be allowed through an imposition of rate. From MPC's perspective, it is critical that if they are required to operate certain funding levels of USB programs, they need to know that those costs will be recovered in rates.

REP. STORY said that they had heard another bill that extends the life of this program indefinitely, but in doing so it strips off everything but the low income and weatherization parts of the program. Is it the sponsor's feeling that the program should stay intact as it is? **SENATOR JOHNSON** said that the committees work diligently to figure out the best way to do things. He feels that the committee should do what they see is best. The current program is a really satisfactory program. His objection to going beyond 2005 is that the legislators will be different and new to the situation and he thinks that it should come before

a committee on a continuing basis because it is a public purpose bill.

Closing by Sponsor:

SENATOR JOHNSON said that the program has done a lot of good things and he hopes that the companies will continue it.

EXECUTIVE ACTION ON HJ 10

Motion/Vote: REP. MOOD moved that HJ 10 BE ADOPTED. Motion carried unanimously.

EXECUTIVE ACTION ON HJ 18

Motion: REP. OLSON moved that HJ 18 BE ADOPTED.

Motion: REP. JUNEAU moved that AMENDMENT TO HJ 18 BE ADOPTED.

Discussion:

REP. JUNEAU explained the amendment. **EXHIBIT**(feh36a14)

Vote: Motion AMENDMENT TO HJ 18 carried unanimously.

Motion/Vote: REP. JUNEAU moved that HJ 18 BE ADOPTED AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 338

Motion: REP. JUNEAU moved that HB 338 DO PASS.

Discussion:

REP. STORY said that this bill had to do with a problem that the prosecutor had in Yellowstone county in connection to testimony that was given under oath to a federal officer. Montana law doesn't define federal officers as law enforcement officers. The bill seems to make sense, but he doesn't know what the unintended consequences might be, so he can't support the bill.

REP. DEE BROWN thinks that the intent was good, but when we start changing government and start specifying governments, judiciary should look over this bill.

Vote: Motion failed 8-3 with Forrester, Juneau, and Matthews voting aye.

By committee consensus the vote was reversed to table.

EXECUTIVE ACTION ON HB 374

Motion: REP. JUNEAU moved that HB 374 DO PASS.

Discussion:

REP. JUNEAU asked about amendments. Mr. Maly said that there are two sets of amendments. One is ready and is acceptable to the sponsor. The other set came today from the Governor's office, they are largely, but not entirely, congruent with the amendments that have already been made. The Governor's amendments need some technical adjustments to be correct. They have some substantive changes in the intent that are distinctly different from the first set.

REP. EGGERS, the bill sponsor, said that the amendments have been a consensus effort. He is not opposed to any amendments. He thinks we are all on the same page. This is a policy statement where we are trying to coordinate the efforts between the coordinator of Indian affairs and the various tribes, so that we are all communicating with the same terms and understandings.

REP. ROY BROWN clarified that the Governor's amendments are all right. REP. EGGERS said that they are all right.

REP. CURISS asked if it would be acceptable to pass both sets of amendments with the intent of coordinating them and making technical adjustments later if they are needed. REP. EGGERS discouraged that. He thought that the committee should speak to Mr. Hindoein.

Mr. Hindoein, Governor's office, said that his objective was to blend Mr. Maly's amendments with a couple extra ones.

EXHIBIT (feh36a15)

REP. STORY said that this doesn't have to be anywhere tonight, he would like to see the amendment drafted properly as opposed to agreeing to an amendment that may not meet everyone's concerns and having to deal with them later.

REP. ROY BROWN said that he had heard that everyone agreed to the amendments that the Governor's office had come up with, other

than the technical difficulties. It seems to him that they could agree to accept the Governor's amendments.

Motion: REP. JUNEAU moved that GOVERNOR'S AMENDMENTS BE ADOPTED.

Discussion:

REP. DEE BROWN had a note that we should be changing the word "domestic" in front of "dependent."

Mr. Maly said that was in the first set of amendments, and he will be blending the amendments so that everything will be covered.

Vote: Motion carried unanimously.

Motion/Vote: REP. JUNEAU moved that HB 374 DO PASS AS AMENDED.
Motion carried unanimously.

ADJOURNMENT

Adjournment: 5:45 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh36aad)